

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

MONTANA TUNNELS MINING

Employer
and

Case 19-RC-14666

INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 400, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

I. SUMMARY

The Employer is a State of Montana corporation engaged in the business of mining and milling gold, silver, lead and zinc at an open pit mine located forty-five miles north of Butte, Montana. The Petitioner filed the instant petition and now seeks to represent a unit consisting of 88 employees in the mine operations department; essentially excluding all other employees.³ The Employer contends that the unit sought

¹ The Employer and the Petitioner filed timely briefs, which were duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ Initially, Petitioner sought to represent various classifications of employees working in the Employer's mine operations department and a portion of the employees in the mill operations who performing crushing work. However, in its initial brief, Petitioner, concluded that, based on its review of the record, it did not object to limiting the unit only to employees employed in the Employer's mine operations department. After receiving the Petitioner's initial brief, the Region issued an Order affording the parties an opportunity to file supplemental briefs to address the issue of whether mine operations employees constituted an appropriate unit. The Petitioner timely filed a supplemental brief restating its position that the mine operations employees constituted an appropriate unit. On April 13, 2005, the Employer's

is inappropriate and that the only appropriate unit is a plantwide unit composed of 191 hourly employees in the mine operations, mill operations, operations (maintenance), engineering, environmental/laboratory and warehouse departments.⁴

Based on the record as a whole and the parties' briefs, I find that the unit sought by the Petitioner, consisting of the Employer's mine operations department, is an appropriate unit for the purposes of collective bargaining.

Below, I have set forth the evidence presented in the hearing concerning the operations of the Employer and the factors the Board analyzes in determining whether the petitioned-for unit is appropriate. Following the presentation of the evidence, I have set forth a brief summary of the parties' positions, a section applying the Board's legal standards to the record evidence, and my conclusion. The decision concludes with a Direction of Election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE

A. The Employer's Operations

The Employer operates a mining operation in a large open pit mine where it extracts gold, silver, zinc and lead ore. The Employer also operates a mill where it processes the ore for transportation to a smelter.⁵ The Employer's mine is serviced by a mine maintenance shop, pit dewatering facilities and light vehicle shop located approximately 300 feet from the lip of the mine. The Employer's mill is housed in a separate building located between $\frac{1}{4}$ and $\frac{1}{2}$ mile from the lip of the mine or $1\frac{1}{2}$ miles from the bottom of the mine. Near the mill the Employer has a compound of several buildings, including the mill warehouse, the laboratory, and the engineering and administration building. The Employer also operates two crushers, which are connected to the mill by conveyor belts. The primary crusher is approximately 450 feet from the mill building and the secondary crusher is approximately 300 feet from the mill building. The mill and the mine are connected by a road of an unspecified length. According to the record, employees cannot walk on the road and it takes approximately 20 to 25 minutes to drive from the mine to the mill.

The Employer's operations begin with the engineers surveying the mine to determine where the ore is located. The engineers then map the mine and create a plan for mining the material. After the engineers have located the ore and mapped the mine, the mine department employees drill, blast and haul the material out of the mine using various drills, shovels, loaders, dozers and trucks. The mine department employees then transport the extracted ore to the crushers. Once at the crushers, the mill department employees process the ore through the crusher, grinder, floatation, filtration

representative, Donald Miller, telephonically notified the Region that the Employer would not submit a supplemental brief.

⁴ No other labor organization seeks to represent the Employer's employees and no history of collective bargaining exists among the Employer's employees.

⁵ The Employer took over operations in the mine and mill in 1991. Prior to 1991, the mine and the mill were operated by separate, unrelated companies.

and reagent processes. After the final product is complete, it is hauled away from the site and sent to a smelter.

The Employer's operations consist of ten departments: mine operations, mill operations, operations (maintenance), engineering, safety/security, environmental/laboratory, accounting, warehouse, geology and human relations. The Employer's general manager is responsible for overseeing the Employer's operations, including the ten departments. Each department, in return, has a superintendent, chief or manager who reports directly to the general manager. All the managers and general manager are salaried employees, which neither the Petitioner nor the Employer assert should be included in the unit. The only employees at issue in the present case are the hourly employees in the mine operations, mill operations, operations, engineering, environmental/laboratory, and warehouse departments.⁶

The mine department consists of 88 hourly employees. As mentioned above, the mine department employees, which include truck drivers, drillers, and other heavy equipment operators, are responsible for extracting the ore in the mine. The employees in the mill operations department are responsible for processing the ore through the crushing, grinding, floatation, filtration and reagent processes. There are 33 hourly employees working in the mill department. The operations department consists of 56 hourly employees, who are primarily responsible for the maintenance at both the mill and the mine. The Employer's operations department has 33 employees working at or near the mine, in the mine maintenance shop, pit dewatering and the light vehicle shop. Additionally, the operations department has 23 employees who work in mill maintenance. The engineering department has two hourly employees who survey the drills sites, collect samples and take the samples to the lab to be assayed. The environmental/laboratory department consists of seven hourly employees who perform all of the assays of the mine samples and analyze the quality of the product coming out of the mill. The warehouse department consists of five hourly employees, in two locations: the main warehouse near the mill and the mine warehouse. The warehouse department employees deal with materials management, including purchasing, receiving and storage.

B. Relevant Factors

1. Functional Integration

As mentioned above, the Employer's mine department employees and extract the ore from the pit mine. The mill department processes the ore. The Employer's remaining departments provide mechanical, scientific and material support for the mine and the mill. Once the mine has extracted the ore, it is delivered to the crushers for processing. For the most part, the mine operations and the mill operations are separate. However, there is some overlap at the crushers, where the mine department employees move and deliver ore and waste material, while the mill department

⁶ The geology and human relations departments do not have any hourly employees. Additionally, the Employer and the Petitioner stipulated that the safety/security department's and the accounting department's hourly employees should be excluded from the unit.

employees operate the crushers. The crushing and further mill processing is under the supervision of the mill manager. From various points in and about the mine, the distance to the mill, administrative offices, engineering, warehouse and laboratory is about ½ to 1 ½ miles. The Employer's operations department has some employees who work in closer proximity to the lip of the mine, in the mine maintenance shop, light vehicle shop and pit dewatering. The mine maintenance shop is between 350 and 500 feet from the lip of the mine. The Employer maintains separate employee rosters for its different departments, but one seniority list for the entire facility. The communication between the different departments occurs at the supervisory level. Additionally, the Employer has different budgets for the mine department and the mill department.⁷

2. Frequency of Contact between Employees

The contact between the various departmental employees is necessarily dictated by the unique department schedules which are explained more fully in Section 5 below. All the employees share the same entrance to the Employer's property, although the mine and mill department employees have different parking lots. The Employer has two primary changing rooms: one in the mine maintenance shop and one located at the mill.⁸ The mine department employees, mine warehouse and mine maintenance employees primarily use the changing facility in the mine maintenance shop. The mill department employees primarily use the changing room in the mill. The Employer asserts that the changing facilities and lunch rooms are available to all its employees. While, the mill department employees and other hourly employees use the lunch rooms during their lunch break, the mine department employees voted not to take a lunch break so as to shorten up their workday. The record suggests that employees share other common facilities, such as the warehouse, the mine maintenance shop, the light vehicle shop and the administrative offices. However, the record does not demonstrate how often the employees from various departments use these facilities.

All employees attend a monthly safety meeting with their respective supervisor and the safety director. There is an annual eight-hour refresher safety training for all of the Employer's employees. In addition to the safety meetings, the Employer holds a general meeting three times a year. The general meetings are held in three shifts, one for the mine department, one for the mill department and one for the remaining employees. The Employer also has an annual Christmas Party each year.⁹

3. Interchange with Other Employees

The Employer's job openings in any department are posted company wide. The Employer has an application process that every potential candidate must follow if they are interested in the position. There is no indication that the Employer's employees who

⁷ The record is unclear how these budgets are created and whether the other departments also maintain separate budgets.

⁸ The record indicates that there are four locations for employees to change, three with lockers. The record is unclear, however, on the location of two of the four changing rooms.

⁹ The record does not reveal the nature and extent of contact between mine department employees drivers and the mill department employees working in and about the crusher.

apply for positions are given preference over applicants from outside the Employer's facility. The positions that open in the mine department are normally filled by applicants from outside the Employer's facility because the jobs are seen as undesirable to the employees in other departments. The Employer's witness testified that within the past year, approximately ten employees permanently transferred from the mine to the mill through a job posting and application process. The Employer produced documentary evidence showing that four people had permanently transferred out of the mine in February 2005. There is no evidence of transfers into the mine.

In addition to these transfers, the Employer's witnesses testified about temporary transfers between the Employer's departments. These transfers primarily concerned mine department employees working in other departments either because there was not enough work in the mine, the other department needed the specific skills the mine department employee possessed or the mine department employee desired to work voluntary overtime. The Employer has an overtime program in which volunteers can put their names on a list and be called to work in other departments when needed. The record reveals that approximately 20 to 30 of the 88 mine department employees are able to operate the crusher and do so approximately once a month. Additionally, mine department employees will work with mine maintenance on projects requiring machine operation. Less frequently, mill department employees and engineers, who are former miners, will work in the mine as truck drivers. The record is unclear on how often this occurs.

The Employer produced the time sheets of four mine department employees who worked in the mill department during their days off (Employer Exhibit 7). The Employer also produced nine foreman reports dated between October 6, 2002 and March 28, 2005 (Employer Exhibit 8). The report dated March 28, 2005 provided that some mine department employees worked in the maintenance shop and mill because there was an insufficient number of trucks in the mine. The reports dated October 6, 2002, June 25, 2003, July 15, 2003, February 15, 2004, February 16, 2004, September 10, 2004 also show that mine department employees work in other departments. When an employee works in another department, the employee is supervised by that department supervisor. The employee is also paid by that department; however, the employee's regular supervisor is responsible for maintaining his or her payroll record.

4. Common Skills and Functions

The Employer presented evidence that each specific job task requires unique training. Only mine department employees are familiar with the operation of certain types of drills and loaders. The mine also has a blasting truck that is used exclusively in the mine. The mill department employees are trained to operate equipment that is similar by not identical to equipment used in the mine. The mill also has stationary equipment that is not located at the mine. Additionally, the mine and the mill share some drills, loaders, dozers and mobile cranes. The record is unclear on the specific job skills necessary in the environmental/laboratory department and the engineering department. There are no special skills required for the warehouse employees other than computer experience. The operations department employees have a wide range

of skills depending on where they work and the type of work they do. Some operations department employees have technical degrees. Other than the operations department employees, only the engineers have post-secondary education.

There is no specific evidence showing the employees are required to be cross trained or the existence of any sort of cross training program. Indeed, an employee in a specific department must learn the job skills required in that department in order to reach the highest pay scale. For example, a mill department employee must learn crushing, grinding, floatation, filtration and reagent processes (the five mill processes) before the mill department employee is able to reach the highest pay level within that department.

5. Commonality of Wages, Hours and Other Working Conditions

The Employer has three-step wage scales for each job category, i.e. Mine Operator I, II, III, and Mill Operator I, II, III. Every employee has a sixth month probation period between the first step and the second step. The beginning wage for mill department employees is \$15.25 an hour. The beginning wages for the mine department employees are different depending on the equipment they are operating. For example, truck drivers begin at \$15.25 an hour, while drillers and dozer operators begin at \$15.60 an hour and shovel loaders begin at \$16.20 an hour. Maintenance employees begin at \$15.45. Employees in the warehouse and engineering begin at \$14.90. All employees share the same benefits.

Each of the Employer's departments has unique work schedules. The mine department has two 10 hours shifts (1 day and 1 night shift) without a lunch break. The mine operators work 4 days on and then 4 days off. The mill department has 12 hour shifts with a lunch break. The mill works a rotating schedule of 4 nights on, 3 days off, 3 days on, 1 day off, 3 nights on, 3 days off, 4 days on, and then 7 days off. The engineering department works 10 hour shifts, 4 days a week. The environmental/laboratory department works 11 hours everyday with 4 days on, 3 days off, 4 days on, and then 5 days off. The warehouse department employees work Monday through Friday for 8 hours each day. Finally, the operations department employees work a variety of different schedules depending on the work and the work location.

When an employee is sick, the call-in policies are different for different departments, but any employee may call the control room. Mine department employees are generally required to contact their respective foreman. All the employees fill out times cards, but the time card procedures are different for different departments. For example, the mine department employees use blue time cards and are responsible for tracking not only their time but the equipment they are operating. In the mill department, the foreman maintains the employees' hours in a logbook and the employees do not have separate timesheets.

6. Supervision

The Employer has a general manager and a human relations manager who are responsible for overall supervision and enforcement of the Employer's labor policies. In addition, each department has separate supervision in terms of both front line supervisors and department managers. For example, the operations department has four supervisors who report to the maintenance manager. Additionally, the mill department has four front line supervisors and a general foreman who report to mill manager. Mine also has four front line supervisors who report to the mine superintendent. The supervisors of the various departments do not supervise the employees of another department on a regular basis.

III. POSITIONS OF THE PARTIES

The Petitioner is seeking to represent a unit comprised of the Employer's mine department employees; excluding all mill department employees, professional employees, clerical employees, guards, and supervisors as defined by the Act. The Employer, on the other hand, argues that the unit sought is inappropriate because the mine department employees share a community of interest with its remaining hourly employees. The Employer therefore argues that the only appropriate unit is a plantwide unit composed of 191 hourly employees in the mine operations, mill operations, operations, engineering, environmental/laboratory and warehouse departments.

IV. ANALYSIS

As the foregoing reveals, the primary issue raised by the parties in this case concerns whether the unit sought by Petitioner is appropriate. In the *Boeing Co.*, 337 NLRB No. 24 (2001), the Board described its policy with respect to determining appropriate units:

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB No. 85, slip op. at 2 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997).

Moreover, the Board has held that there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit. Rather, the Act requires only that the unit be "appropriate," that is, appropriate to insure to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." *Bartlett Collins Co.*, 334 NLRB No. 76 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf'd. 190 F.2d 576 (7th Cir. 1951); *Federal Electric Corp.*, 157 NLRB 1130 (1966); *Parsons Investment Co.*, 152 NLRB 192 fn. 1 (1965); *Capital Bakers*, 168 NLRB

904, 905 (1968); *National Cash Register Co.*, 166 NLRB 173 (1967); *NLRB v. Carson Cable TV*, 795 F.2d 879 (9th Cir. 1986); *Dezcon, Inc.*, 295 NLRB 109 (1989). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores*, 160 NLRB 651 (1966). Indeed, "the Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees." *Bartlett Collins Co.*, *supra*.

It is also well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. See, for example, *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422–423 (4th Cir. 1963), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F.2d 478, 480 (10th Cir. 1962). The Board will pass only on the appropriateness of units that have been argued for. *Acme Markets, Inc.*, 328 NLRB 1208 (1999).

The Board's primary means of evaluating the appropriateness of a unit, is determining whether the proposed unit shares a community of interest. The Board examines several factors to determine whether the employees share a community of interest, such as: (1) functional integration; (2) frequency of contact with other employees; (3) interchange with other employees; (4) degree of skill and common functions; (5) commonality of wages, hours, and other working conditions; and (6) shared supervision. *Publix Supermarkets Inc.*, 343 NLRB No. 109 (2004); *Ore-Ida Foods*, 313 NLRB 1016 (1994).

Here, the record demonstrates that with regard to functional integration, the Employer has organizationally separated the mine department employees from employees working in other departments. Moreover, the mine department employees perform the distinct function of extracting ore from the mine while mill department employees perform the distinct function of milling that ore. These distinct functions are highlighted by the geographic distance between the mine and the mill and the lack of integration between the mine and the mill's separate, distinct and respective processes. In particular, at its farthest point, the mine operations are approximately 1½ miles from the mill operations. The route between the mine and mill takes approximately 20 to 25 minutes to drive. The record further reveals that once the mine department employees deliver the ore to the crushers, the mill department employees assume control of the ore and begin processing it. At that point, the Employer's mill department manager supervises the milling process beginning with the crushing process. Regarding the crushing process, the record discloses that of the 88 mine department employees, only 20 to 30 of those employees are also able to operate the crusher but such operation only occurs on an infrequent and voluntary basis during overtime hours. Indeed, the Employer's witness testified that mine department employees are never assigned to the crusher as part of their normal workday. Additionally, there is no evidence in the record that mine department employees are trained to work in the other mill processes - grinding, filtration, floatation or reagent.

With respect to the factor of frequency of contact with other employees, the record indicates that mine department truck drivers may have contact with mill crushers when dumping a load of mined ore. However, the record does not detail the extent and nature of such contact, which could be nothing more than dumping ore in a designated area of the crushing site and then turning back to the mine for another load. Moreover, there appears to be little contact during the regular workday as mining department employees do not take a lunch break and the work schedules for the various departments vary in significant respects. In short, the record revealed insignificant contact between mining department employees and other employee departments during the normal course of a regular workday.

As to the factor interchange, the Employer's testimony in this regard is critically lacking in detail, and is unsupported by documentary evidence. The bulk of the testimony concerned Employer Exhibits 2 and 3 titled "Frequent" and "Occasionally," which the Employer's witnesses relied on to demonstrate employee interchange. When questioned in detail about the specifics concerning the interchange, an Employer witness acknowledged that his estimates would be "rough" and used qualifiers on his time estimates such as "monthly or so" and "weekly or so." Moreover, the Employer's witness testified that the foundation for the information contained in Employer's Exhibits 2 and 3 was time sheets and foreman shift reports. Yet, the time sheets and foreman shift reports introduced into the record showed only infrequent interchange between employees. Most importantly, the documents did not show any transfers, permanent or temporary, from other departments into to the mine. Rather, the documentary evidence showed four permanent transfers in February 2005 from the mine department to the mill department (Employer Exhibit 6), four mine department employees who worked in the mill department on a voluntary basis during their days off (Employer Exhibit 7), and nine incidents of mine department employees working in other departments between October 6, 2002 and March 28, 2005 (Employer Exhibit 8). Overall the evidence demonstrates only infrequent interchange between mine department employees and the remainder of the Employer's departments.

Regarding the factor of skills and common functions, the record demonstrates that for the most part, each department requires unique skills and training. For example, the mine department employees are trained to operate specific equipment, such as unique drills, shovels and trucks, which are not used by the mill department employees. The mine department employees are also specifically trained by the Department of Alcohol, Tobacco and Firearms in blasting and these mine department employees are the only employees responsible for blasting. The employees in the other departments similarly possess skills unique to their department. The warehouse employees are generally unskilled, except they are required to have computer experience. The engineers generally have advanced degrees and have specialized skills in finding the ore and mapping the mine. The mill department employees work with both mobile and stationary equipment, and must learn all five mill processes in order to advance to the highest pay grade.

Regarding the commonality of wages, hours, and other working conditions, the mine department employees have a wage scale tied to the skills sets acquired by employees within that department. For instance, within the mine department, blasters receive a particular pay rate linked to the skill of blasting, which is unique to that department. In the mill department, employees begin their pay at a level incorporating aspects of the work performed in crushing and then proceed through four more mill department skills sets (grinding, flotation, filtration, and reagent). Thus, the skill sets through which mine department employees progress in order to achieve pay raises is different from other departments, such as the mill, and is tied to requisite skills necessary to performing mining department work. Shift days and hours is another term and condition of employment that differ among the various departments within the Employer's overall operations. Unlike the mill department employees, mine department employees generally access facilities, including maintenance shops, warehouse and changing rooms, that are near the mine and whose primary purpose is to serve the mine operations. The mine department employees also maintain their timesheets in manner uniquely different from the other departments, in that they are responsible for recording their hours and the equipment they worked on during their shifts. Finally, the mine operators have separate safety meetings and general meetings.

Regarding the factor of supervision, the mine department employees fall under a different hierarchy of management and supervision, which includes a superintendent and four supervisors. Not only is management and supervision of the Employer's various departments, organizationally separate and distinct, the budgets for the mine and mill departments are also separate and distinct.

In sum, the mine department employees are functionally organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work with little overlap; the Employer's work is not significantly functionally integrated; there is little contact between the mine department employees and the mill department employees; there is no significant interchange; and the mine department employees are separately supervised from employees in the Employer's other departments. That some mine department employees may occasionally perform mill department work not strictly within their job description does not render the unit inappropriate where, as here, the mine department employees spend a substantial majority of their time performing distinctive duties. See *United Operations, Inc.*, 338 NLRB 123, 125 (2002). Additionally, I note that no other labor organization seeks to represent the Employer's employees and no history of collective bargaining exists among the Employer's employees. Based on the above and the record as a whole, I find that mine department employees share a community of interest that is separate and distinct from other department employees. Thus, I find that the unit sought by Petitioner is an appropriate unit.

The Employer argues that a plantwide unit is appropriate and bases this argument in large part on what it considers to be significant contact and interchange between all employees. However, the Employer's evidence to support this argument is unpersuasive. Moreover, the Employer has cited no cases in support of its position that a plantwide unit is appropriate in the circumstances of this case.

In *Sohio Natural Resources Co., Uranium Ops.*, 237 NLRB 1261 (1978), the Board addressed an appropriate unit issue in a mining and milling operation involving facts similar to those in this case. There, the mine and the mill at issue were approximately 1,300 feet apart. The Board found that there were 6 to 8 transfers between the mine and the mill over the 20 months leading to the hearing and there were isolated instances of temporary employee interchange. See *Id.* at 1262. The Board also found that both mine and mill employees worked on the same shift, entered through same gate but proceeded to separate parking lots, had separate time clocks, separate lunch areas and separate locker rooms. See *Id.* at 1261-62. In deciding that the petitioned-for unit of mill employees (excluding mine employees) was an appropriate unit, the Board listed seven factors supporting its decision. In particular, the Board noted the lack of contact between the mill and mine workers and the de minimis nature of employee interchange. See *Id.* at 1262. The Board's holding in *Sohio*, fits the circumstances here where there is also a significant lack of contact and interchange between the Employer's separate and distinct mine and mill departments.

The cases, wherein the Board has found both mine and mill workers to constitute an appropriate unit, are distinguishable from the present case. In *Exxon Company, USA*, 225 NLRB 10 (1976), the Board found that the mine and the mill employees constituted an appropriate unit where the union sought only the above ground mine employees and sought to exclude the below ground mine employees. Also in *Consolidated Cement Corp.*, the Board found employees working in the processing plant and in the mining quarry to constitute an appropriate unit based on the large degree of employee interchange evidenced in 46% of the processing employees who also performed maintenance and other work in the quarry. 119 NLRB 492, 493 (1957).

V. CONCLUSION

In view of the above and the record as a whole, I find that the unit of mine operations department employees sought by Petitioner, is an appropriate unit (hereinafter "Unit"). Accordingly, I shall direct an election in the following appropriate Unit:

All regular full-time and part-time mining operations department employees employed by Employer at the Employer's facility located near Butte, Montana; excluding all other employees, guards, managers and supervisors as defined by the Act.

There are approximately 88 employees in the Unit found appropriate.

VI. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 400, AFL-CIO.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before **April 22, 2005**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349

(1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on April 29, 2005. The request may **not** be filed by facsimile.

DATED at Seattle, Washington this 15th day of April 2005.

/s/ James R. Kobe

James R. Kobe, Acting Regional Director
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